

ISSUES OF CHURCH - STATE - CULTURE INVOLVING
THE U.S. MILITARY CHAPLAINCY

(A Preliminary Investigation)

(1963)

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In the now famous, or infamous (depending upon one's persuasion), New York Board of Regents case, more properly known as Engel vs. Vitale, which was decided by the U.S. Supreme Court this past summer, Justice William Douglas had some very interesting comments to make in <sup>Carthage
see below</sup> his concurring opinion that highlight the current church-state situation in this country. While the majority opinion in this case restricted its decision to rather narrow grounds, to wit: "It is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by the government,"¹ Justice Douglas took a somewhat different tack. He wrote, "The point for decision is whether the Government can constitutionally finance a religious exercise. Our system at the federal and state levels is presently honeycombed with such financing.. Nevertheless, I think it is an unconstitutional undertaking whatever form it takes." He quoted the famous line from the Zorach case, "We are a religious people whose institutions presuppose a Supreme Being," but he added to this a statement from the dissenting opinion in McGowan vs. Maryland: "But if a religious leaven is to be worked into the affairs of our people, it is to be done by individuals and groups, not by the Government."²

Justice Douglas listed a number of the encroachments of the principles of separation of church and state with which our society is "honeycombed." Among these he included the use of Bibles for oaths,

¹ Engel vs. Vitale, 370 U.S. 421,425.

² Ibid., 442-443.

religious services in federal prisons, tax exemptions for religious organizations, and congressional and military chaplains. With the mention of this last category Justice Douglas brings to the foreground a very interesting situation in the history of church-state relations. In view of the widespread interest in such relations and the great impact of the military in our society today, this writer felt that this would be an excellent point of view from which to examine at least one aspect of the impact of American culture on the churches and the impact of religion upon our society.

The purpose of this paper is not to give a philosophy for solving the problems of religion in the armed services of this country, nor to give a history of the situation in detail. The former would be a task involving much more thought and investigation than a paper of this scope could afford; and the latter has already been done in great detail by other writers. The purpose, rather, will be to point up some of the issues that surround the military chaplaincy in the church-state-culture context and to suggest some of the points of view that have been taken in the past and are being taken now with respect to this complicated and rather anomalous institution.

I. Historical setting.

Although it has been stated that this is not an historical paper, some history of the chaplaincy seems necessary to put the study in proper perspective.¹ In a broad sense, there have been chaplains as long as there have been wars. Wherever men have recognized gods, there have been representatives of the supernatural at the side of the sol-

¹ Material in this historical survey is based upon Henry B. Washburn, "The Army Chaplain," in Papers of the American Society of Church History, Second Series, Vol. VII, (New York: G. P. Putnam's Sons, 1923), pp. 12-23.

diers. In anciet times, these representatives were used to determine the divine will or to secure divine favor for the military objectives at hand. The use of priests by the Hebrews at the battle of Jericho is often given as an early example of this activity.

The word "chaplain" seems to come from an incident in Christian history. St. Martin supposedly shared his coat (capella) with a poor beggar. After his canonization, this coat became a treasured relic of St. Martin, a former soldier, which was always carried into battle to encourage divine favor. The chaplain at that time was a keeper of this coat, or more generally, a keeper of any relic. His status as a combatant was limited to defense of the relics.

Closer to the time of the Reformation, the chaplain came to deal more with the personal religious life of the individual. This continued in post-Reformation wars as the chaplain sought to give moral stimulus and spiritual comfort to the men. In the Thirty Years War, the chaplains often conducted the singing of hymns and prayers before battle. At the time of the American Revolution, a Congressional Delegate, Daniel Roberdeau wrote to Washington giving the purpose of the American chaplaincy at that time in the following words.

Congress has this day made a new arrangement of the chaplains department. This new and honorable Establishment is designed to suppress the horrid sins of Cursing, swearing and other Vices with which, I am sorry to say, our Army Vies with the most abandoned of the English troops; to strengthen the Officers' hands by public and private exhortations to obedience of General and Regimental Orders; to discourage Desertions by recommending the Service: to encourage Enlistments; to recommend cleanliness as a virtue conducive to health, and to reprehend the neglect of it.¹

Washington added to this by quickly implementing the act of Congress by the following General Order.

¹ The American Army Chaplaincy: A Brief History, (Washington: The Chaplains Association, 1946), p. 45.

All chaplains are to perform divine service tomorrow and every succeeding Sunday . . . where the situation will possible admit of it. . . . Every neglect, will be considered not only a breach of orders, but a disregard to decency, virtue, and religion.¹

Washington praised the work of his chaplains and wrote Congress for increases in pay for them. In the Revolution, many chaplains fought as well as led services, seeing no contradiction between fighting and their calling as clergymen ^{serve the beloved} believing both roles to be part of a holy crusade. They worked vigorously to uphold morale as well as to stimulate religion, both tasks interpreted as part of their godly mission. This role remained predominant with many chaplains through the Civil War, even to the present time, though today chaplains would probably claim that their primary task is, in the midst of fighting, to keep the soldier aware of a loving Father and a righteous God.

II. Legal status of the chaplaincy in the U.S.

From this brief historical review, some of the issues involving church, state, and culture can no doubt already be seen, but before considering them, a few remarks should be made concerning the legal status of the chaplaincy. As was alluded to above, the chaplaincy began in this country by an act of the Continental Congress at the very beginning of the Revolution, in July of 1775. This action was ¹ seconded by early action of the new Congress under the Constituion.

On March 3, 1791, Congress adopted the following:

In case the President of the United States should deem the employment of a . . . chaplain . . . essential to the public interest that he be, and he hereby is, empowered, by ^{and}₂ with the consent of the Senate to appoint the same accordingly.

Congress established the emolument of the chaplains at \$50.00 per

¹ Ibid., p. 45.

² Ibid., p. 9.

month including pay, rations, and forage. This legislation has been followed by many other Congressional provisions for the chaplaincy down through the years. At present, chaplains are considered by law as officers with rank but without command functions. They are given the duty of holding appropriate religious services at least once each Sunday; and all commanders are ordered to furnish the necessary assistance and cooperation for the conduct of these services. An example of this authorization for the Navy is given as follows:

- a. An officer in the Chaplain Corps may conduct public worship according to the manner and forms of the church of which he is a member.
- b. The commanders of vessels and naval activities to which chaplains are attached shall cause divine services to be performed on each Sunday whenever the weather and other circumstances allow it to be done; and it is earnestly recommended to all officers, seamen, and others in the naval service diligently to attend at every performance of the worship of Almighty God.
- c. All personnel in the Navy and in the Marine Corps are engendered to behave themselves in a respectable and becoming manner during divine services.
- d. Each chaplain shall report annually to the Secretary of the Navy the official services performed by him.

Appropriate regulations of the Army, Navy, and Air Force are promulgated from time to time implementing the statutory provisions concerning chaplains and giving them their duties within the military establishments. An example of this is the following Army Regulation:

The duties of the chaplain as prescribed by existing laws are closely analogous to those performed by clergymen in civilian life, modified only by those peculiar conditions attaching to military life and especially by the necessity that each chaplain will so far as practicable, serve the moral and religious needs² of the entire personnel of the command to which he is assigned.

This statutory provision is about all that can be cited for the

¹U.S. Code, Annotated, Title 10 "Armed Forces, #6031, Sub-section C, Ch. 555, (Brooklyn: Ed Thompson Co., 1959).

²Army Regulation 60-5 (1941), Paragraph 4a.

chaplaincy inasmuch as there is no direct provision for it under the Constitution, nor has the situation ever been directly litigated before the Supreme Court. In the only cases involving the chaplaincy that this writer was able to find, the legality of the chaplaincy was more assumed than pronounced upon by the Court. One of these cases, decided in 1894, concerned a particular chaplain's pay. The issue in the case was whether post chaplains in certain special circumstances were actually in the service of the military and whether or not they were responsible to the military as officers. The answer of the Court to both questions was in the affirmative.¹ The other case dealt with the recess appointment of a chaplain and the rescinding of the appointment. The Court decided that despite the withdrawal of the appointment before Senate confirmation, during the time the appointment was in the *bona fide* hands of the man, he was a bonified chaplain and so entitled to compensation. Settling this question and at the same time upholding the power of the President to make recess appointments, the decision did little in the matter of validating the institution of the chaplaincy.²

Though actual litigation involving the chaplaincy has thus been rather meager, arguments surrounding it have not. As we are here concerned with the church-state aspects of the chaplaincy, it would seem well to examine in some degree the present church-state legal philosophy of the Supreme Court before reviewing the issues involving the status of the chaplaincy today.

III. The Supreme Court and the First Amendment.

The basis for all argument respecting the validity of any government attitude toward religion is the First Amendment to our Federal

¹U.S. v. LaTourette, Court of Claims, 1894, 151 U.S. 522.

²O'Shea v. U.S., (1893), 28 Ct. Cl. 392.

Constitution which declares that "Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof . . ." As can readily be seen, the Amendment does not say very much, nor very much specifically; and here is the genesis of the problem. As Chief Justice Warren stated in an opinion in a case involving the Eighth Amendment: "The words of the Amendment are not precise and . . . their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."¹

Part of the Court's task is always to look back to the founding fathers to try to discover the intent of any particular provision of the Constitution. But here, even at the very beginning, there is confusion. We have already noticed Washington's great interest in the chaplaincy. Some very early rules of the Army and Navy made attendance at worship services compulsory. Yet Madison and Jefferson opposed any connection between the government and religion, both refusing to proclaim religious fasts and festivals such as a day of Thanksgiving. They objected to any payment of religious authorities out of public funds. Madison wrote:

Better also to disarm in the same way the precedent of Chaplainships for the army and navy, than erect them into a political authority in matters of Religion. The object of this establishment is seducing; the motive to it is laudable. But is it not safer to adhere to a right principle, and trust to its consequences, than confide in the reasoning, however, specious, in favor of a wrong one?²

This philosophy of Madison and Jefferson has largely been followed through the years in interpreting the Amendment with the interesting

¹As quoted by Leo Pfeffer, "The Case for Separation," in John Cogley, ed., Religion in America, (New York: Meridian Books, 1958), p. 55.

²As quoted in Conrad H. Moehlman, The Wall of Separation: Church and State, (Boston: The Beacon Press, 1951), p. 113.

exceptions of the proclamation of days of Thanksgiving and the military chaplaincy.

(By way of an aside at this point, it may be mentioned that while the Enlightenment philosophies of Madison, Jefferson, and Thomas Paine are usually credited with the leading role in developing our doctrine of the separation of church and state, there is also another, a specifically religious base for this doctrine. For somewhat different reasons and from quite different points of view men like Jonathan Edwards and Roger Williams argued that the state and the church dealt with different subjects, that is, different aspects of man's life, and for the best functioning of both aspects, the two should be kept separate.¹ Here we see another interesting example of the confluence of Puritan theology and Enlightenment philosophy which has come to play such an important role in the development of the American ethos and the whole relationship between Christianity and American culture.)

The actual phrase, "separation of church and state," was coined by Jefferson in a letter in which he explained his reasons for his unwillingness to proclaim religious days of thanksgiving.

Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between church and state.²

Nearly a hundred years ago, the Supreme Court in a unanimous decision speaking through Chief Justice White, quoted this statement and de-

¹For a fuller discussion of this point, see Pfeffer, in Cogley, op. cit., pp. 61-66.

²As quoted in Pfeffer, in Cogley, op. cit., p. 73. The underlining has been added.

clared that "it may be accepted almost as an authoritative declaration of the scope and effect of the Amendment."¹

It is rather generally recognized that an absolute separation of church and state is an impossibility. So the work of the Court in decision after decision has been to try to make some reasonable modus operandi for the day in which we live. This process continues at the present time with several very significant cases pending now before the Court. Yet, though opinions have varied through the years, certain things do stand out in the Court's philosophy that perhaps should be mentioned. The Court has been concerned with two aspects of the Amendment -- no establishment (separation) and free exercise (freedom of worship). The work of establishing a philosophy of church and state involves a tension between these two, which, as we shall see shortly, bear very directly on the case of the military chaplaincy.

Professor Joseph Blau has seen the tension as a three-fold one, that it is necessary to maintain freedom of religion, so that all people may worship as they choose (none being established). It is also necessary to maintain freedom from religion, so that no one is forced to worship a god if he does not so desire. Finally, there is the necessity of freedom for religion, guaranteeing religious groups the right to organize, but not the dangerous tendency to seek "rights" above the law, that is, special privilege and prerogative.²

Most of the significant cases involving the Amendment that have relevance for our consideration here actually deal with matters in the realm of education, but shall nevertheless be mentioned here because of the thought they develop. In 1930, the Court in Cochran v.

¹ Reynolds v. U.S. (1878), as quoted by Pfeffer in Cogley, op. cit., p. 74.

² Joseph Blau, Cornerstones of Religious Freedom in America, (Boston: The Beacon Press, 1949), esp. pp. 3-30.

Louisiana State Board of Education, approved the public provision of secular textbooks, in public and parochial schools, but on the grounds that the statute aided students, not churches. Similarly in 1947, in Everson v. Board of Education, the right of New Jersey to provide reimbursement to parents for expenses of transportation to both public and parochial schools was upheld. Though there was but a majority of one in the decision, all the justices agreed that non-preferential government aid to religion would violate the First Amendment.

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation" between church and state.¹

The next year, attorneys for the Champaign, Illinois, public school system asked the Court to reverse its interpretation in the Everson case to allow non-preferential and non-discriminatory state aid to religion. The Court instead, however, reaffirmed the earlier decision by her forbidding released time religious education on school property. The Court again declared "that the First Amendment has erected a wall which must be kept high and impregnable."²

Some breaching of this "high and impregnable" wall seemed to come about in the Zorach case (1952) which allowed released time re-

¹ Everson v. Board of Education, 330 U.S. 1, as quoted in Pfeffer in Cogley, op. cit., pp. 85-86.

² People ex re McCollum v. Illinois, 333 U.S. 203, as quoted in Tax Benefits Granted to Religious Organizations, (Baltimore: The Daily Record Co.), p. 21.

ligious education in New York according to a plan which called for the instruction to be received under church auspices outside the public school building. However, it was again maintained in reaffirmation of the McCollum decision that "government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian instruction."¹

Justice Douglas' comments in this case, striking a rather strange contrast with his 1962 statements, were nevertheless very interesting for our purposes. He declared: "We are a religious people whose institutions presuppose a Supreme Being (and) when the state encourages religious instruction . . . it follows the best of our traditions."² He further asserted:

The First Amendment. . . . does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter. Otherwise the state and religion would be aliens to each other -- hostile, suspicious, and even unfriendly.³

From this it would seem obvious that neither religious freedom nor separation of church and state are completely absolute. Certain religious practices against the health or welfare of the public have always been forbidden. Medical treatment for some people's own welfare, though against their religious principles, has been called for upon occasion. But the significant thing is that the state is limited in what it does, and the church is limited in what it may demand.

The state is not allowed to pre-empt the totality of man's personal-

¹Zorach v. Clauson, 346 U.S. 306, as quoted in Pfeffer, in Cogley, op. cit., p. 88.

²Ibid., as quoted in Tax Benefits Granted to Religious Organizations, op. cit., p. 22.

³Ibid., as quoted in David Fellman, The Limits of Freedom, (New Brunswick: Rutgers University Press, 1951), p. 38.

ity and activities nor the church unwarranted privilege. Freedom and separation are the general rule. The presumption is always on their side, yet it is most difficult to say what the line of demarkation actually is; but the prevailing attitude seems to allow for a maximum of religious freedom with as much separation of church and state as religious freedom requires.¹

The principle of separation and freedom was conceived to be as absolute as possible within the limitations of human communal society. Only where it was unavoidably necessary to prevent an immediate and serious danger to the security or welfare of the community were infringements on religious freedom to be justifiable, and only to the smallest extent necessary to avoid the danger. Likewise, the separation aspect was conceived to be as absolute as could be achieved, predicated as it was on the concept that ²religion is outside of the cognizance of political government.

All of this really does not settle much concerning the question of the military chaplaincy. For with all of these cases behind him Justice Douglas in his concurring opinion in the Engel case (perhaps inferring that his views in the Zorach case were wrong) declared that the chaplaincy was an example of things we should not be doing. Yet Justice Stewart, reading the same cases, in his dissenting opinion in the same case mentioned the military chaplaincy as an example of things we do everyday involving a connection between church and state, things which no one need even question. By analogy, then, even the Board of Regents' prayer should not have been stricken down, according to Justice Stewart. Perhaps the cases now before the Court will throw more light on the situation, but lacking this information, we must move on to examine the issues and contentions as they have arisen in our society in non-judicial situations.

¹Fellman, op. cit., p. 42.

²Pfeffer, in Cogley, op. cit., p. 92.

IV. The Legal arguments against the military chaplaincy.

As discussed above, the interpretation of the First Amendment has been sufficiently ambiguous, even with the most recent clarifications, for there to exist many ideas of what constitutes the proper relationship between church and state, from the broadest and most latitudinarian conceptions to the narrow and absolutistic idea of what separation involves. These opinions, as might be expected, have influenced views of different groups toward the military chaplaincy.

Though officially, that is in the military, in Congress, and in the opinions of the Supreme Court, there has been little challenging of the chaplaincy, this has not been the case for society generally. Groups, varying in nature from the American Association of Atheists to some of the churches themselves, have sought the abolition of the program from time to time. We have already noted Madison's objections. A Tennessee Congressman in 1856 filed a petition signed by 149 of his constituents opposing the chaplaincy on constitutional grounds.¹ Memorials were presented in 1849 and again four years later to the House Judiciary Committee opposing this form of "establishment," with, however, little influence upon the action of the Committee or Congress as a whole.² In 1872, Francis Abbot in The Index presented nine demands of "secularists" looking for the elimination of indirect religious influence. Included among these demands was a call for abolition of the military chaplaincy.³ Following is a summary of the arguments used by those asking for an end to government supported military chaplains.

¹Roy J. Honeywell, Chaplains of the U.S. Army, (Washington: U.S. Government Printing Office, 1958), p. 85.

²Daniel B. Jorgensen, The Service of Chaplains to Army Air Units: 1917-1946, (Washington, U.S. Government Printing Office), p. 59.

³Blau, op. cit., pp. 12-13.

A. The government has no legitimate authority in this field.

This argument in essence is that powers not delegated to the United States are reserved to the states or to the people. The power to employ clergymen has never been delegated. Furthermore, religious tests for office are strictly forbidden by the Constitution, but one of the qualifications of the chaplaincy is a religious test. Congress has no right to create an ecclesiastical office, nor to induct any person into such office.¹

B. The government has no authority to appropriate public funds to pay for religious service.

The Everson case clearly determined that the government may not grant material aid to the churches or to church schools, on a preferential or a non-preferential basis. The military chaplaincy is a clear demonstration of aid to the churches inasmuch as clergymen are recognized as, in fact must be, indorsed representatives of the various churches. This is the brunt of Justice Douglas' opinion in Engel v. Vitale, in which he argues against the constitutionality of any activity which is religious in nature receiving federal financing, in whole or in part. Though it might be very ^{likely} _{near} impossible to eliminate every instance in which public money somehow serves the cause of religion, the argument does have particular cogency for the chaplaincy situation in that the entire salaries of the chaplains, the chapels in which services are held, and all the equipment and materials needed for the religious program are provided at government expense. Such financing is interpreted as "establishment" in a broad understanding of that word

¹This argument was interestingly developed in the mid-nineteenth century by David Moulton and Mordecai Myers in a set of debates concerning the use of legislative chaplains in the state of New York. See Blau, op. cit., pp. 141-56, 216, and also Honeywell, op. cit. p. 85.

which seems to have been current at the time of the adoption of the First Amendment and which gives the word the technical meaning of "some kind of official support."

C. Religion in all cases must be voluntary.

There is a strong suspicion in this country of anything that smacks of compulsory religion, be the compulsion in the form of performance of a religious act or in the form of finance. The latter has been discussed above. We now turn to the former. Washington, in his orders of June 28, 1777, instructed his officers to attend services to set an example before the men. Similarly he gave orders against profaning the name of God.¹ Navy regulations adopted in 1799, which were taken over from regulations of 1775, provided for compulsory attendance at services twice a day and for a sermon to be preached on Sundays unless extraordinary circumstances prevented it. The regulations, too, provided for fines for the use of profanity. There were no exceptions made for members of minority groups. These regulations were changed only when they seemed to be discouraging Roman Catholic men from enlisting in the Navy.² Though such formal examples of compulsory religion have for the most part disappeared, there still remains compulsory attendance for cadets at the U.S. Military Academy, although this situation is complicated by the presence of a civilian chaplain rather than an Army man and by the uniquely educational nature of the program of the Academy.

However, it might also be charged that compulsion exists to a degree in the requirement that all servicemen receive an orientation

¹Honeywell, op. cit., p. 58.

²Clifford M. Drury, The History of the Chaplain Corps, U.S. Navy, Vol. I, 1778-1939, (Washington: Bureau of Navy Personnel), p. 11.

lecture by the chaplain and that all are required to attend Character Guidance classes, although the material presented in these situations stresses more natural law concepts, patriotism, and the necessary virtues of good citizenship than any particularly religious theme.

The argument in favor of voluntarism appears from the church side as well as from those who fear that religion will be forced on them, though with more religious than legal concern. There ~~has long been~~ has long been a sentiment in this country that maintenance of religion in any form by the government ultimately leads to corruption of it. Upon these grounds many churchmen have approved the decision of the Supreme Court in Engel v. Vitale. Similarly, a Navy plan to assist prospective chaplains with their theological training under the World War II V-12 plan caused much concern among churchmen, although the plan had received endorsement by official church groups.¹ One of the many articles in the Christian Century prior to World War II opposing the cooperation of church bodies with the authorization of chaplains procedure did so on the grounds that the chaplaincy violated the separation of church and state. The chaplaincy, the article stated, should be run and operated either by the church or by the state. Under current procedure it was the state's business, and the church should stay out.

Is it any part of the business of the Christian Church to make itself officially responsible in any degree for an agency created and supported by the state and which is responsible to the state alone?²

These, in brief, are the arguments opposing the present system of providing for the religious welfare of men and women in the Armed

¹ Christian Century, LX (1943), pp. 599-601, 611, 629-31, 645-6.

² Editorial, Christian Century, LV (Dec. 21, 1938), pp. 1567-69.

Forces. From these arguments we now turn to those used by the supporters of the present arrangement.

V. The Legal arguments supporting the military chaplaincy.

A. The diversity of the chaplaincy prevents any violation of the wall of separation.

The House Judiciary in 1849 and again in 1853 answered the memorials mentioned above by declaring that inasmuch as "diversity of truth is tolerated as freely as the constitutional requirement, in the minister, as well as in those for whom he officiates; and while the expense is so small as not to be felt by any one"¹ there was no need to interfere with the chaplaincy, especially in view of the need of the men to worship wherever they might be in the service of the nation. The fact that all denominations are represented and that none are treated preferentially is declared to prove that there is no state establishment of a religion and that no official religion is being promulgated.² Even though the military religious program may seem to be a form of a state established church, the government has no role in controlling beliefs and ritual. Some have further declared that the arrangement, rather than violating the doctrine of separation, actually fulfills it; for the church alone is responsible for training the chaplains, for ordaining them, indorsing them, and reaching out through them to the men in the military service.³ The government simply graciously provides the opportunity for the churches to follow their men and their families wherever they happen to be.

¹ House Reports, 124, No. 583, Vol. I, Thirty-first Congress, as quoted in Drury, op. cit., pp. 64-5.

² Waldo W. Burchard, "Role Conflicts of Military Chaplains," American Sociological Review, XIX (Oct., 1954), p. 533.

³ Jorgensen, op. cit., p. 60.

B. Because of the peculiar military situation, the usual distinctions involving interpretation of the First and other Amendments are not applicable as they are to ordinary life.

This argument declares that the very nature of the military life and the military establishment make the Supreme Court cases cited above and the general trend of constitutional law with respect to the First Amendment inapplicable. There is a special body of "Military Law" that governs the members of the Armed Forces which makes theirs a special situation. "By enrollment in the military forces of the United States, the individual assumes new obligations, and is subjected to certain forms of control to which he was not before subject."¹ This distinction was recognized in the Fifth Amendment where it states:

No person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger.

The Supreme Court, in Arver v. U.S.(1917), the case upholding the Selective Draft Laws, recognized the peculiar situation of a time of war or national emergency.² The first ten amendments are still in effect with respect to the members of the military, but the powers of Congress concerning them are much broader. The courts retain the power to examine legislation limiting normal rights to see if the amendments have been abridged too severely, but the power of Congress along these lines is not challenged.³

What this line of argument means is that the nature of the military establishment makes a comparison of military practices and democratic convention impossible. The military is a special creation within a

¹W. W. Willoughby, The Constitutional Law of the United States, (New York: Baker, Voorhis, and Company, 1929), III, p. 1535.

²Ibid., p. 1556.

³Ibid., p. 1770.

democratic society for its defense and is not meant to be an extension of the democratic way of life. The fact that a sergeant can tell the soldiers in his platoon to shine their shoes every morning does not mean that he can tell a civilian to do the same; nor does it mean that the civil rights of the platoon members have been violated. The special function of the military cannot, therefore, be placed within the scope of the general church-state controversy. While the military chaplaincy operates within a paternalistic and authoritarian system that is alien to civilian society, the relinquishing of normal separation is necessary because of the needs of the military forces. The military does not pretend to be an ideal social structure but a required variation from the normal for the protection of the civil rights of society as a whole.¹

Chaplains working in this system are well aware of the limits within which they serve. As far as the government is concerned, they serve a military purpose. At the same time the chaplains know that they serve a missionary role in a military society which has been extracted by its very nature from civilian society. If there is to be religious activity in the Armed Forces, and if the military is to have the control it deems necessary for the proper functioning of the military establishment and the control necessary of persons involved in battlefield or other military functions, it must be under a system that in some ways involves something other than the normal tradition of separation of church and state.

¹This argument is developed in an editorial, "Chaplaincy No Argument for Federal Aid," Christian Century, LXXVIII (May 10, 1961), pp. 581-2.

C. Freedom of worship for men and women in the Armed Forces demands some compromise with the principle of separation.

This argument follows closely on the heels of the one immediately preceding which emphasized the peculiar legal situation of the military establishment. This argument goes on to declare that an absolute separation of church and state in the Armed Forces would deprive men and women, many of whom are in the military for reasons other than their own choosing, of free expression of religion. Separation is valuable only as long as this doctrine promotes rather than hinders freedom of worship.¹

At the beginning of World War II, President Roosevelt declared that "we will never fail to provide for the spiritual needs of our officers and men under the chaplains of our armed forces."² The task of the chaplain is to implement this statement, to be the spiritual leader of his unit, and to assist the commander of that unit in the task of seeing that "every serviceman is given all possible assistance in practicing his religion."³

Madison himself made exception to his opposition to the military chaplaincy in the case of ships far from the shores of the United States. With armies scattered the world over, the entire military situation today is not too unlike the naval situation Madison saw in an earlier day that would allow for an exception to his proscription.⁴ What the military is doing is providing one of the basic needs of the people it controls, just as it provides for the dietary, medical, and

¹ Wilbur G. Katz, "The Case for Religious Liberty," in Cogley, op. cit., pp. 96-7.

² Gerald H. Ryan, "Manpower on the Spiritual Front," The Ecclesiastical Review, CIX (July, 1943), p. 2.

³ Robert R. Wilson, "Status of Chaplains with the Armed Forces," American Journal of International Law, XXXVII (1943), p. 492.

⁴ Leo Pfeffer, Church State, and Freedom, (Boston: The Beacon Press, 1953), pp. 151, 217-8.

recreational needs of its people. Most Americans would oppose government grocery stores and restaurants, government theaters, and government bowling alleys; but military necessity makes all of these essential in a particular situation.

A corollary of this argument would relate this situation to those of the Cochran and Everson cases previously discussed. The provision of worship opportunity and pastoral counseling is not a direct service to the churches, but is instead a service to the men, women, and children involved. Likewise, "it is not the Army, but the men in the Army who need the ministries of religion which only the church can bring."¹ Church is not serving state, nor is state aiding the church. The state is providing an opportunity for the church to serve men and women whom the state has required to be in an abnormal situation.

This argument, however, presupposes that for there to be effective religion in the Armed Forces, it must be controlled and supported by the military itself. Many have argued that such an implication is not necessary. They would point to other nations which have different systems -- Britain, where chaplains have no military title; the Scandinavian countries where the chaplains have no military title and wear civilian garb; the Balkans, where, though there is a close tie to the military authority, there is no uniform nor rank for the chaplains.²

Plans have long been devised for civilian control of the chaplaincy program, the latest being suggested by a former chaplain, Martin Siegel, in the Christian Century of August 8, 1962. He argued that a chaplaincy with civil service status, more like that in hospitals or prisons, would enable the chaplains to use the weight of

¹Editorial, Christian Century, LXX (April 8, 1953), p. 403.

²"Khaki or Black," Literary Digest, CXXII (Dec. 26, 1936), pp. 30-31.

their moral and religious tradition rather than rank to get things done. It would obviate their thinking in terms of rank which can cause them to turn away from delicate problems for fear of their careers, and would help see that young recruits would find a more sympathetic, non-military ear for their problems.¹ A later editorial discussing this plan used the analogy of the Red Cross as a civilian agency that sends men wherever the troops are.²

Opponents of these plans would point, in rebuttal, to the great problems created during World War I when some religious work was carried on by civilian YMCA secretaries and by such civilian groups as the "Floating Society of Christian Endeavor."³ The Federal Council of Churches considered a plan for civilian chaplains in 1938 and rejected as impractical the replacement of military chaplains with civilians. The Council report instead urged closer contact between the churches and the chaplains to alleviate some of the problems created by the military situation.⁴ The experience of the YMCA, the Knights of Columbus, and the Red Cross led these organizations to declare officially that religious services could best be provided by chaplains who were within the military establishment. The general opinion has been that civilian chaplains would be lost in the military, considered as outsiders, would be working without the respect of enlisted men or officers, and would be working without access to confidential mili-

¹ Martin Siegel, "Revamping the Military Chaplaincy," Christian Century, LXXIX (August 8, 1962), pp. 1959-60.

² Editorial, Christian Century, LXXIX (Sept. 19, 1962), pp. 1119-20.

³ Drury, op. cit., pp. 140-1.

⁴ Honeywell, op. cit., p. 203, and "Khaki or Black," op. cit., pp. 30-31.

military information that would help them serve their troops.¹

All of this added to the contention that for the government to permit religious services in a military and especially in a battle situation, a certain amount of control is necessary to prevent chaos, the argument carries great weight that for religious expression to exist, especially in the most dangerous situations, a military sponsored and military supervised chaplaincy is essential.

D. Military necessity is a justifiable reason for breaching the normal separation of church and state.

Religious freedom or separation, according to this argument, may be constitutionally restricted when necessary for the protection of an interest more important to the country than the unrestricted exercise of religion. Therefore, conscientious objectors have no right before the law to claim exemption from service. Likewise, if it is deemed militarily necessary for the safety of the country to have military chaplains, the constitutional strictures against such an association of church and state must be relieved. In the Old Testament we read:

And when you draw near to the battle, the priest shall come forward and speak to the people, and shall say to them, "Hear, O Israel, you draw near this day to battle against your enemies: let not your heart faint; do not fear, or tremble or be in dread of them; for the Lord your God is he that goes with you, to fight for you against your enemies, to give you the victory."²

It is declared by many that the function of the chaplain in much this same capacity is a military necessity today.³

This is the argument the House Judiciary Committee added to its earlier statement when the chaplaincy issue was presented to it again

¹ Gilbert H. Conway, in Christian Century, LXI (Jan. 26, 1944), p. 115.

² Deuteronomy 20:2-4, The Holy Bible, (Revised Standard Version), (New York: Thomas Nelson and Sons, 1952).

³ Pfeffer, Church, State, and Freedom, op. cit., pp. 217-18.

in 1853. It declared that the exercise of religion was necessary for "the safety of civil society."¹ Numerous quotations could be cited from military leaders declaring the value of the chaplains to the war effort. They stress the chaplain's work in helping a man develop a philosophy of life and of the democratic system, religiously under-girded, which can help him to be willing to fight. They also recognize the chaplain's value in dealing with men frightened and disturbed by the peculiar positions in which they find themselves in war. The experience of the turn-coats in the Korean War emphasized to them the necessity of having soldiers understand the ideological basis of the struggle in which they participate. A sample of these statements is the following from General Eisenhower. Speaking to chaplains, he said:

Yours is a great responsibility, for, to a great extent, you help determine the motivation of men by making articulate and effective a great philosophy of life, a religious philosophy which makes a man a better citizen in both war and peace. Your special contribution to society, military and civilian, is in the realm of character; and human character is the source of world order or world disorder.²

A study commission on the military chaplaincy which reported to President Truman following World War II declared that the religious programs and services carried out by the chaplains in addition to their primary spiritual values "are an essential part of an attempt to make available an environment and services which will improve the general morale, promote military efficiency, and enhance national preparedness and security."³ This report listed some of the functions in addition to the spiritual which contributed to the efficiency of the military man:

¹ House Reports, 124, No. 143, Vol. II, Thirty-second Congress, First Session, as quoted in Jorgensen, op. cit., p. 59.

² General Dwight D. Eisenhower, as quoted in an editorial in Christian Century, LXIII (Nov. 6, 1946), p. 1332.

³ The Military Chaplaincy, (A Report to the President by the President's Committee on Religion and Welfare in the Armed Forces), (Oct. 1, 1950), p. 1.

- 1) They administer the rites of religion in battle and in camp.
- 2) As experts in the spiritual field, they are able to advise commanders on morale problems.
- 3) Through inspirational talks, they inspire men to greater performance of duty.
- 4) Through sympathetic counseling, they help solve personal problems and help servicemen perform their duties more effectively.
- 5) Through leadership in character guidance programs, they help combat delinquencies and promote greater efficiency.
- 6) Through their close daily contact with military personnel, they provide an effective unofficial channel for redress of grievances.
- 7) Through participation in rehabilitation programs they help restore to duty men who might otherwise become permanent delinquents.¹

The interesting feature of this argument, however, is that this very justification for the chaplaincy on the part of many military men is the exact reason it has been vigorously opposed by some churchmen. This was especially true in the period between the two world wars when the pacifist movement was strong in this country. But this is less an issue involving the church-state question and more one involving the confrontation of the Christian faith with culture, culture here represented by the government's military operation. So we will now turn to the cultural issues concerning the chaplaincy.

VI. Cultural issues surrounding the military chaplaincy.

- A. The church should withdraw from the chaplaincy because connection in any way with the military involves a denial of the Gospel of Christ.

This argument was promoted most aggressively by the Christian Century magazine during the twenties and thirties. The Century argued that for the church to be able to disengage itself from the "war system," it must begin where the two come officially together -- in the military chaplaincy.

¹ Ibid., p. 18.

Here is the vital nexus between the church and Mars, by means of which Mars keeps Christian ideals and impulses in his control, and by which the church gives the lie to all her fine speeches and resolutions about the exceeding sinfulness of war.¹

This same article quoted statements such as were mentioned above in which various generals gave praise to the chaplains for their contribution to the war effort. The article declared that no war can be carried on without the blessing of religion. Men with the authority of Jesus Christ, the Century continued, must divest themselves of that authority when they make it subject to the command of the war system. The article quoted the Boston Transcript which had called the reserve chaplains "America's first bulwark against pacifists and objectors." The article further stated that the function of the chaplain was to militarize the churches as much as to Christianize the army. It allowed that ministers were needed for the men, but not military chaplains. "The Chaplaincy is the outstanding attempt to put Christ officially in khaki, and that . . . simply cannot be done." Such an attempt is the very falsification of the Christian ministry!² Many other articles in different issues of the Century spoke along similar lines, as did pronouncements from the World Peace Union and the World Alliance for International Friendship.³

A chaplain sympathetic to the institution of the chaplaincy gave something of the same argument, however.

In the first place the chaplain is not a civilian in uniform; he is not a "camp pastor" of the first World War with an interest in the army. The chaplain is a soldier. That means more than sleeping on cots and saluting properly. It means

¹ "Get the Churches out of the Chaplaincy Business," Christian Century, XLI (Nov. 20, 1924), p. 1494.

² Ibid., pp. 1493-5.

³ "Should the Chaplains Go?", Literary Digest, CXV (June 3, 1933), p. 19.

that the chaplain is fundamentally in agreement with the war effort. There is no specific directive against a pacifist being enrolled as a chaplain, but a pacifist clergyman would have a rather difficult time being convincing. . . . A chaplain has to prepare men for¹ battle. This no one who has any experience with war can doubt.

Chaplain Olsson continued that the chaplain must believe that he is a participant in a just struggle, that there is no honorable alternative for his nation. While he believes that war is never holy and good in an ultimate sense, it does represent in historic crises the closest approximation to the good of peoples.

This leads us to the answer those disagreeing with the pacifists give to their arguments. They declare that chaplains do not sanctify war. They help men clarify their responsibility to their nation and hold up ultimate loyalties which justify and qualify patriotism and military necessity. The chaplain can point out that war is not the road to glory, but a tragic necessity, that the enemy, too, is one for whom Christ died and therefore must not be treated with hate and vindictiveness.² "If he understands his role clearly, and if the churches support him faithfully, the chaplain need not exchange his birthright for a mess of pottage nor his gospel for a pot of message."³

It is also emphasized that society as a whole bears responsibility for war. We cannot blame the chaplaincy for what society is responsible.⁴ The chaplains simply minister to men. And as long as men are involved in military service, there is a missionary opportunity

¹Karl A. Olsson, "Mission of the Chaplain," Christianity and Crisis, XLI (October 4, 1943), p. 5.

²L. Alexander Harper, "The Chaplain: A New Look," Christian Century, LXXIV (Feb. 13, 1957), pp. 194-5.

³Ibid., p. 196.

⁴"Taking Christ out of Khaki," Literary Digest, LXXXIII (Dec. 27, 1924), p. 33.

and responsibility for the churches. The chaplaincy program simply insures fairness, good coverage, and high standards in this ministry.¹

B. The anomalous position of the military chaplain has certain serious repercussions on the man himself.

In view of the arguments just presented, it would be strange if the chaplain did not feel some ambivalence toward the situation in which he serves the spiritual needs of a man while also making him a more effective killer. He no doubt feels strange at seeing religion so easily used for non-religious ends. The chaplain finds something of a theological conflict within himself concerning the doctrines of love, universal brotherhood, peace, non-resistance to evil, and the commandment against killing, as all of these at times seem incompatible with his role in a nation at war. A Christian in military service has difficulty putting these doctrines into practice, and in many cases he will seek help from his chaplain.

So the chaplain must think through this problem, if not for himself, for those whom he serves. He may justify the military operations within the categories of the just war, or perhaps along the lines of self-defense. He may conclude that the commandment against killing is really against "murder." He may modify the commandment to turn the other cheek as not applicable to the national situation at a given moment because of the nature of the enemy faced. But whatever the answer is that he may give, a certain amount of anguish will be involved. To deny the relevance of the doctrines mentioned is to question the value of Christ's teachings, but to admit the relevance is perhaps to make the Christian the violator of his own moral precepts.

¹ Jorgensen, *op. cit.*, p. 60.

Furthermore, as the chaplain helps his men see that their military work does not harm their relationship to God and as he helps them adjust to the military situation, as he gives patriotism a religious base, and as he helps promote the smooth operation of the military organization by interpreting the values of the military establishment, he finds himself an integral part of the same system about which his men have sought help. This cannot help but have a profound effect upon the man and cannot help but arouse feelings of guilt.¹

Those who answer this charge would point out that war is bound to have an effect on all persons in a nation to a greater or lesser degree, and the more deeply one thinks about it the greater will be the sense of guilt and personal frustration involved. The military and civilian leaders of the nation wrestle with these same problems. Certainly no clergyman, in or out of the service, can be expected to escape. One thing we have learned in recent years anew is that ethical choices are not easily made between black and white alternatives. The anguish of corporate guilt is simply one of the conditions under which we all must live. The chaplain recognizes what he has to do in order to minister to the spiritual needs of the men in his unit and sets out to do it as best he can in what is at best an unfortunate situation.

C. The uniform, status, rank, pay, and allowances of an officer that accompany the position of the military chaplain hinder his work and compromise his ministry.

Opponents of the chaplaincy charge that the role of military officer and clergyman simply do not go hand in hand. One is bound to suffer at the expense of the other. The chaplain as an officer auto-

¹A documented psychological and sociological study of this problem and other role conflicts is given in Burchard, op. cit., The discussion here represents some of Burchard's findings.

matically creates a barrier between himself and the enlisted men to whom he ministers which cannot help but hamper his work.

Proponents of the military chaplaincy system counter by stating that the wearing of the uniform identifies the clergyman as "a member of the team" and also indicates that he is committed to the same hardships and sacrifices that his comrades are. It ties him into a relationship with his parishioners that few of his civilian counterparts ever approach.¹ Chaplains themselves through the years have felt that rank is necessary for them to get concessions from the military hierarchy for the enlisted men they serve. Rank also helps them to minister to officers who might otherwise look upon them as "outsiders" to the military operation. Without rank, the chaplain would command respect of neither officer nor enlisted man.² In the long run, rank and uniform are not for the benefit of the chaplain but are given to him so that he can better serve all men, that he might have a professional relationship with the soldier and a place in the military channels for helping him.

D. The military chaplaincy runs a serious risk of developing a religion of the lowest common denominator, a sort of culture-religion that vitiates the legitimate distinctions between denominations.

There is a fear on the part of many that, due in part to the lack of liaison with the parent denomination and in part to the peculiar military situation, doctrinal differences between denominations become weaker and weaker, the result being a sort of common denominator type of culture religion. Church groups such as the Wis-

¹The Military Chaplaincy, op. cit., p. 17.

²Jorgensen, op. cit., p. 60.

consin Synod of the Lutheran Church have opposed the chaplaincy on such grounds. In an earlier period of American history, the Baptist church voiced opposition to the prevalence of the liturgical emphasis in the military demonstrating a strong Anglican influence. The necessity of the chaplain to serve or provide for the needs of all the men of a command in so far as he can contributes to the problem. Statements such as "The church is universal at the front," add weight to this charge, as do some special duties that devolve upon chaplains that seem to compromise his position.

One chaplain resigned during World War II because he was asked in an interview at the Naval Chaplain School what he would do if he were given \$500.00 by his commander to rent a hall, buy liquor and see that the men on liberty had a good time, and because he was asked if he could give a lecture on the use of prophylactics to men desiring to see women on shore leave. He declared that he could not cooperate in such ventures and, therefore, was allowed to resign. The comment of the Navy was that chaplains are supposed to exemplify in its broadest aspects "tolerance and Christian charity."¹

Another example of how a chaplain's religion might be compromised is given in the Christmas party situation. During World War II, chaplains at bases where dependents were living sponsored these parties with the assistance of Special Services officers.

At Gardner Field, the Christmas program featured the arrival of Santa Claus in a BT-13 awaited by the children on the ramp, a procession led by the band and Santa Claus to the recreation hall, and the distribution of presents and refreshments while the band played a medley of Christmas carols and songs.²

¹ Time, XLIII (February 7, 1944), p. 38.

² Jorgensen, op. cit., p. 215.

Concerning these Christmas parties, one high ranking chaplain said:

Due to the religious significance of the season, the children's Christmas tree party, while not a religious celebration, is and should be the chaplain's problem child. And let it be said here, that no expenditure of thought, planning, work, or effort which results in a bigger¹ and better Christmas party for the children is "wasted effort."

Many chaplains might feel that this emphasis is just the opposite of what a chaplain should be encouraging at this time of year, and that the chaplain's sponsorship of Santa's arrival in an airplane can only cause more confusion as to what is the purpose of Christmas and how it is to be celebrated religiously. How far must a pastor go down the road of compromise to serve his men?

Defenders of the chaplaincy would reply to this question that the chaplain need not go down the road of compromise at all. Though the chaplain is a military officer, he is always a denominational clergyman. Any time the denomination removes its indorsement of him, he is through in the military. He is instructed by law and by military regulation to conduct services as his denomination prescribes. It is stressed over and over again that the military religious program involves cooperation without compromise and that no chaplain is expected to do anything that is contrary to the faith or practice of his denomination. Furthermore, the government is not in favor of common denominator religion. It does now encourage, and always has so urged, a closer connection between the chaplains and their churches. Of course, bigotry, sheep-stealing, and stubbornness are frowned upon, but nothing in the military is designed to water down the legitimate denominational emphasis of any chaplain. The fact that weakening of denominational ties may have occurred is due more to the neglect of

¹ Jorgensen, op. cit., p. 215.

the churches than any practice within the military. True ecumenical cooperation is fostered by the military experience, but a watered-down, culture religion is not a desired or an actual product.

Conclusion:

From this discussion it is hoped that the reader can see that there is definitely a confrontation of the church with at least one facet of society, the military establishment, in the chaplaincy situation. It has not been the purpose of this paper to measure whether this confrontation is damaging to the message of the church or to the effectiveness of the military operation, or if the institution is complementary to the task of either or both. The purpose has been merely, in the first section of the paper, to explore some of the legal arguments surrounding the church-state question as it pertains to the chaplaincy and to point up some areas where further thinking and clarification are necessary as the tendency to pin down the meaning of the First Amendment becomes more intensified. The purpose of the second part was to show some of the issues that arise when the impact of the military upon the church and the reverse is considered. Before any value judgments could be placed on the results of this confrontation, at least by this writer, much more study and a more refined methodology would necessary to measure the import of the confrontation.

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